

Exhibit 95

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF NEW YORK

MARVEL WORLDWIDE, INC., MARVEL)
CHARACTERS, INC., and MVL RIGHTS,)
LLC,)
)
PLAINTIFFS,)

VS.) NO. 10 CV 141 (CM) (KNF)

LISA A. KIRBY, BARBARA J. KIRBY,)
NEAL L. KIRBY and SUSAN N. KIRBY,)
)
DEFENDANTS.)

VIDEOTAPED DEPOSITION OF MARK EVANIER
LOS ANGELES, CALIFORNIA
DECEMBER 6, 2010

REPORTED BY: CHRISTY A. CANNARIATO, CSR #7954, RPR, CRR
JOB NO.: 34168

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December 6, 2010

9:35 a.m.

Deposition of Mark Evanier, taken on behalf of
Plaintiffs, held at the offices of Paul Hastings,
515 S. Flower Street, 25th Floor, Los Angeles,
California, before Christy A. Cannariato,
CSR #7954, RPR, CRR.

A P P E A R A N C E S

REPRESENTING THE PLAINTIFFS:

WEIL, GOTSHAL & MANGES

BY: JAMES W. QUINN, ESQ.

BY: RANDI W. SINGER, ESQ.

767 FIFTH AVENUE

NEW YORK, NY 10153

-AND-

HAYNES AND BOONE

BY: DAVID FLEISCHER, ESQ.

1221 AVENUE OF THE AMERICAS, 26TH FLOOR

NEW YORK, NY 10020

REPRESENTING THE DEFENDANTS:

TOBEROFF & ASSOCIATES

BY: MARC TOBEROFF, ESQ.

2049 CENTURY PARK EAST, SUITE 2720

LOS ANGELES, CA 90067

ALSO PRESENT:

ELI BARD, DEPUTY GENERAL COUNSEL MARVEL ENTERTAINMENT

CHRIS JORDAN, VIDEOGRAPHER

1 briefly met Martin Goodman. But between '58 and '63, I
2 think -- well, Stan Goldberg was partly on staff during
3 that time.

4 Q. How about Larry Lieber?

5 A. Larry Lieber was freelance during that period,
6 I believe. I don't believe he was on staff.

7 Q. But he was working from Marvel between '58 and
8 '63?

9 A. He was in the freelance category, I believe.

10 MR. QUINN: I though I said either.

11 MR. TOBEROFF: You can continue with your
12 answer because he asked for both freelance and at the
13 office.

14 A. In freelance, people who worked for Marvel --
15 excuse me.

16 People who did freelance work for Marvel
17 during '58 and '63 would include Jack Kirby, Steve Ditko,
18 Don Heck, Dick Ayers, Gene Colan, Vince Colletta, Russ
19 Heath, Stan Goldberg, Al Hartley. Leaving some people
20 out. These are people who I spoke to.

21 John Buscema did, I think, a few jobs for them
22 during this period. Bill Everett did a few jobs for them
23 during this period. Joe Sinott, Larry Lieber, Don Rico.
24 I think George Roussos. I'm missing somebody. Paul
25 Reinman, Artie Simek, Sam Rosen.

1 I think Marie Severin did some freelance work
2 for them during this period, maybe a little later than
3 '63.

4 There's probably another name or two --

5 Q. Okay. That's fine.

6 A. -- I can't think of at the moment.

7 Q. That's fine.

8 Now, when you were first retained by Mr.
9 Toberoff, what did he say to you about specifically about
10 the opinions that he wanted you to render?

11 MR. TOBEROFF: Lacks foundation. Assumes
12 facts.

13 A. Well, I think the issue of me doing an expert
14 report was first mentioned by The New York Times before
15 Mr. Toberoff approached me. I declined to be interviewed
16 by The Times, and in an article they said Evanier would
17 not -- some form of Evanier didn't speak to us because
18 he'll probably be a witness in this case or an expert.
19 And I believe Mr. Toberoff said something like, Well, I
20 guess The New York Times was ahead of us.

21 Then he asked me to prepare an expert report,
22 and he said that he wanted me to cover -- he wanted me to
23 address the relationship -- the working relationship that
24 Jack had with Marvel, how he worked for them, what his
25 relationship to the company was.

1 at the bottom of page 4, and then over to page 5. And
2 you're talking about the period, I think, in the 30s to
3 the 60s where you say that "the comic book industry was
4 very much a fly-by-night industry." Do you see that?

5 A. Yes.

6 Q. And what did you mean by that?

7 A. Comic book publishers were -- well, the
8 industry was born out of leftovers from the pulp magazine
9 business, and the sheet music business, and a few other
10 publications.

11 And publishers were not very stable. They
12 came and went. They were small operations. They did not
13 project an air of stability to their freelancers. A lot
14 of people who worked for comic book companies weren't sure
15 they were ever going to get paid. A lot of checks
16 bounced.

17 There was always -- there was often a sense
18 that the business was always a year from ending. During
19 the 1950s, in particular, publishers came and went at an
20 alarming rate. Over the years I heard many, many stories
21 from artists and writers that they would go to an office
22 to turn in work, and the company wouldn't be there
23 anymore. Or they would get there and find out that the
24 books that they were submitting for had been canceled.
25 They started up titles and ended them at an alarming rate.

1 If you go through even the major publishers in
2 that period, there are all these incidences of the
3 company, you know, clinging to the window ledge by its
4 fingernails, just barely holding on, threatening to close
5 down, closing down sometimes and reopening a couple weeks
6 later.

7 People being paid in cash. People being paid
8 under the table, kickbacks.

9 It was not a mature business in the sense that
10 the companies had stable foundations. There were
11 companies that didn't even have physical offices.
12 Somebody edited a line of comics out of their garage.

13 Q. And how did you come -- I'm sorry. You can
14 finish. I'm sorry.

15 A. Well, just that the first generation of comic
16 book publishers, until you had corporate takeovers in the
17 late 60s, were small operations from -- generally owned by
18 men who had stumbled into publishing. A large number of
19 comic book publishers were cases where someone had started
20 a company, gone bankrupt, and the printer had acquired the
21 assets of the company and kept it going in order to keep
22 their presses rolling.

23 So that never struck me as a mature way to
24 have a publishing firm when you're putting out product
25 just to keep the presses operative because you've got

1 people there, printers there to pay.

2 And the companies were frequently pleading
3 poverty, lowering rates. It was a very -- it was a
4 business that very few people bet would be there in the
5 future.

6 It's amazing that it's still there. Even when
7 I got into comic books into the early 70s, there were
8 people, prominent people, in the industry predicting the
9 industry had less than five years to live and predicting
10 demise. And then you still had -- would have frequent
11 cases where you came in one day and they'd canceled half
12 the line or laid off half the staff. And there were
13 problems meeting payroll sometimes, problems paying
14 people.

15 So when I say "fly-by-night," that's kind of a
16 way of saying the industry was not very well grounded
17 in --

18 Q. How did you come to find out all these facts?

19 MR. TOBEROFF: Asked and answered.

20 A. All right. Well, since about 1966 or -67,
21 I've been talking to people who did comics. I was
22 fascinated by comic books. And I have interviewed just
23 about everybody I could meet who ever worked in comic
24 books, including, you know, people who ran xerox machines
25 or photostat cameras.

1 interest of mine. And even before I thought I might work
2 in the comic book field, I was fascinated by it.

3 And just, you know, when I was in high school,
4 I found out that one of the kids in my chemistry class had
5 a father who had worked in comics. And I asked him, Could
6 I meet your father? And he didn't understand why I wanted
7 to, and his father didn't understand. But I went over one
8 day and spent the afternoon talking to his father about
9 working for publishers in the 1950s. His father had not
10 drawn a comic book since, well, in at least 10 years. I
11 just wanted to know what the business was like, how he was
12 treated, how he did what he did, how the work was
13 produced.

14 I don't know if I'm answering your question.

15 Q. Yeah. That's fine. Okay.

16 You mentioned at the top of page 5 in that
17 connection that: Comic book publishers did not see any
18 value in the product, in their product, beyond monthly
19 sales figures.

20 What's the basis for that statement?

21 A. Early on, this is something that was told to
22 me by the artists and the editors and people I talked to.
23 Jack Kirby talked to me greatly about that. Jack was in
24 comics almost from the beginning. And he was by no means
25 the only one who told me this, but he used to say that

1 these guys had no imagination; that the publishers all
2 they thought about was this month's sales and that they
3 didn't realize that they were -- that they had the
4 underpinnings of a media conglomerate. Didn't use the
5 term at that time, obviously.

6 But these characters that they were doing
7 could be exploited in other fields. You know, he would
8 point to, in fact, Walt Disney was not interested in just
9 making Mickey Mouse cartoons. Walt Disney was interested
10 in expanding Mickey Mouse into all different fields and
11 doing toys and games and comic books and comic strips and
12 eventually a theme park. Whereas someone like Martin
13 Goodman at Marvel, who he cited frequently, was he thought
14 was a man of limited vision, limited imagination.

15 And he told stories about how he would go to
16 Martin Goodman and tell him what Marvel could be, how it
17 could expand. This is even before it was called Marvel.
18 And he got back very little response. It was just -- he
19 did not -- he always thought that Martin Goodman grossly
20 undervalued Marvel when he sold it in the late 60s.

21 Q. Now, your testimony is or your opinion is that
22 publishers didn't see any value in the product beyond
23 monthly sales figures, but you previously testified, I
24 believe, and written that during this period of time the
25 publishers also would not negotiate with artists with

1 successful or would not be successful. One of my key
2 opinions about Mr. Goodman is that he was frequently wrong
3 about that.

4 Q. But -- I will come back to that.

5 A. All right.

6 Q. You would agree, would you not, that if a book
7 had to be discontinued or was discontinued, it was because
8 the publisher concluded, rightly or wrongly, that it
9 wasn't going to make money?

10 A. There were occasional other reasons to
11 discontinue a comic.

12 Q. Putting aside the other reasons, one of the
13 reasons for sure was that the publisher made a
14 determination that he couldn't make money with a
15 particular comic book line; --

16 MR. TOBEROFF: Vague.

17 Q. -- correct?

18 A. Hold on. Putting aside the other -- putting
19 aside the other issues -- I'm sorry. The question is
20 confusing me.

21 Q. You testified that --

22 A. It sounds like you're asking me: Aside from
23 the fact that -- aside from the cases that he discontinued
24 because he wasn't making money wasn't the only reason he
25 discontinued wasn't that he was making money.

1 self-explanatory, but --

2 Q. Let me focus for a second on when you say
3 "co-created," what do you mean by "co-created"?

4 A. Co-created would be when the creation would
5 probably be credited to more than one person. So each of
6 the creators would be a co-creator.

7 Q. Now, focusing on this period between 1958 and
8 1963, and the particular comic book characters that are
9 the subject matter at issue in this case, what conclusions
10 did you reach with regard to whether those characters were
11 created solely by Mr. Kirby or were created or co-created,
12 rather, by Mr. Kirby and others, focusing specifically
13 with regard to on Mr. Lee?

14 MR. TOBEROFF: Vague.

15 A. Let me have it one more time.

16 MR. QUINN: Yeah, read it back.

17 (The record was read.)

18 A. I believe that the characters -- let me put it
19 this way. I believe that the properties Fantastic Four,
20 The Hulk, Thor, several others here, the overall
21 properties were co-created by Stan Lee and Jack Kirby.

22 Q. And what opinions or conclusions did you reach
23 as to how that co-creation process worked?

24 A. My understanding is that the two of them would
25 sit down. They'd bring in rough ideas they might have had

1 apart, throw them back and forth like any collaboration.
2 Jack would offer ideas for characters. Stan would offer
3 ideas for characters. Some ideas would get discarded.
4 Some ideas would get expanded upon. And then they would
5 emerge with some idea of what Jack was going to go home
6 and draw.

7 Jack would draw the story. If it was 20
8 pages, he would draw 20 pages of material. He would bring
9 it back. Assuming that Stan didn't -- assuming that Stan
10 was happy with what Jack brought in, Stan would then write
11 the copy, the dialogue, the captions on the pages. And
12 then the work would proceed from that through lettering,
13 and inking, and coloring, and publishing.

14 Q. Now, do you have any evidence or did you reach
15 any conclusion or have an opinion as to whether Kirby had
16 created or co-created any of these characters prior to
17 when he returned to Marvel in 1958? And we're focusing on
18 these particular characters.

19 A. On which particular characters were you
20 focusing on?

21 Q. The ones you mentioned.

22 A. The ones I mentioned? I believe Jack had
23 previously done, in some cases, antecedents that were a
24 starting point. He came in with ideas that were then
25 later shaped with input from Stan.

1 Q. And then he would go out and draw?

2 A. Yes.

3 Q. And which ones would those be where he had a
4 starting point and then collaborated with Stan?

5 A. Well, I believe Jack had done several stories
6 prior to '58 about a version of Thor. And I believe he
7 brought in that idea, he suggested the idea. Or at the
8 very least, when the idea of doing Thor came up, he said,
9 Oh, I've done Thor. He had existing ideas about Thor
10 prior to '58 that he brought into the mix.

11 Q. Right. But he didn't actually draw the Thor
12 character prior to '58; correct?

13 MR. TOBEROFF: Misstates his testimony.

14 A. He draw a Thor character prior to 1958. Yes.

15 Q. No, let me be very precise. I didn't say a
16 Thor character. I said he didn't draw the Thor character,
17 the character that became Thor, prior to 1958; correct?

18 A. To my knowledge, he did not draw the Marvel
19 version of Thor prior to 1958.

20 Q. Any others, other than having had ideas with
21 regard to Thor-like characters?

22 A. Well, Jack had been pitching an idea prior to
23 coming back to Marvel that became -- that was a clear
24 precedent from his viewpoint for Sgt. Fury and the Howling
25 Commandos. He had an idea. He developed ideas as a

1 newspaper strip for a war comic, a newspaper strip with --
2 about a sergeant who was very similar to the way Sgt. Fury
3 came out. So he brought that idea to some extent.

4 Q. And then he sat down with Stan Lee, and they
5 ultimately came up with what became Sgt. Fury?

6 A. Yes.

7 Q. Then he went and drew that?

8 A. He drew the first issue. Yes.

9 Q. After consulting with Mr. Lee?

10 A. I assume so. Yes.

11 Q. Other than those, can you think of anything
12 else?

13 A. Well, Jack had worked on a character called
14 Spiderman prior to 1958. He had worked -- there are
15 antecedents in The Fantastic Four to earlier work of his,
16 particularly "The Challenge of the Unknown," which he
17 started for DC.

18 Am I answering your question?

19 Q. Well, he himself and others in the Kirby
20 family have stated he did not create Spider-Man. You're
21 aware of that?

22 A. I am not aware of that.

23 Q. In fact, his drawing for Spiderman, original
24 drawing for Spiderman, was rejected by Mr. Lee, and he
25 asked Mr. Ditko to actually draw Spider-Man; correct?

1 Q. He initially he had assigned Jack to do the --
2 this is your understanding -- initially assigned Jack to
3 do the Spider-Man drawings, looked at them, for whatever
4 reason didn't want to use them, and then assigned Ditko,
5 Steve Ditko, to actually do the drawings that were used.

6 A. Yes. And I believe that, for example, is not
7 in dispute.

8 Q. You mentioned that Jack had some idea for
9 Spiderman prior to or something like Spider-Man. Is that
10 based on, what, The Fly?

11 A. No. There was a character when Simon and
12 Kirby were working together in the 50s, they sold -- they
13 did a lot of presentations and pitches and characters they
14 took around to different publishers, and one of them was a
15 character called Spiderman or The Silver Spider. They
16 tried to sell it under both names.

17 And Jack had a title logo, a big piece of art
18 board on which was lettered "Spiderman by Joe Simon," the
19 logo that might be on the cover of the comic. And that
20 logo easily predated the Marvel Spider-Man. And Jack
21 would show that logo around and say: I brought this in and
22 showed this to Stan. I had this in my closet. And when
23 we were looking for new characters, I brought that in.

24 Where there was a piece of physical evidence
25 there that at least proves that Jack was talking about a

1 words, before you answer any of his questions.

2 THE WITNESS: All right.

3 Q. Looking at page 98, line --

4 A. We're on Exhibit 5, page 98.

5 Q. Page 98, lines 15 through 18.

6 A. Okay.

7 Q. And you were asked the question this time not
8 by Mr. Fleischer but by somebody else that:

9 (Reading:) Now, Mr. Evanier, you consider
10 yourself an advocate for comic creators' rights;
11 isn't that correct?

12 You answer: I would say so. Yes.

13 A. Yes, I guess I did use the word "advocate"
14 there. Yes.

15 Q. It refreshes your recollection; correct?

16 MR. TOBEROFF: He used the word "advocate."

17 A. I agreed with Mr. Perkins' word.

18 Q. And you agree with that today.

19 A. Yes.

20 Q. You remain an advocate --

21 A. Yes.

22 Q. -- for comic creators' rights; right?

23 A. Yeah. Not exclusively, but yes.

24 Q. And fair enough. And you have taken it upon
25 yourself from time to time to right wrongs that you

1 perceive to have taken place in the comic book community;
2 correct?

3 A. I believe we had an exchange about that.

4 Q. The very next page.

5 A. Yeah. The question was whether in the
6 question on line 18 -- I was confused as to whether in the
7 question on line 18 where Mr. Perkins -- I think it was
8 Mr. Perkins -- asked me, "And on occasion you've taken
9 yourself -- upon yourself to right perceived wrongs that
10 have taken place in the comic book --

11 THE REPORTER: I'm sorry, you're going to have
12 to slow down when you read.

13 THE WITNESS: I'm sorry.

14 THE REPORTER: That's okay.

15 THE WITNESS: Let me start over here. Let me
16 get a drink of water and start over.

17 A. All right. Starting over. In the question
18 Mr. Perkins asked me that commences at line 18, he said,
19 "And on occasion you've taken it upon yourself to right
20 perceived wrongs that have taken place in the comic book
21 community; is that right?"

22 I did not understand was he saying on behalf
23 of comic creators or rights -- wrongs of any kind.

24 Because I believe that I have at times been involved in
25 righting wrongs that have not been done to comic book

1 unless it was approved either by Mr. Lee or by Mr. Goodman
2 or both of them.

3 A. As with any publisher, yes, the publisher and
4 editor have the final say whether they're going to publish
5 something or not.

6 Q. And you testified previously that from time to
7 time Mr. Lee, when he received materials from Mr. Kirby,
8 would comment on them, and he would make changes in them;
9 correct?

10 A. He would of course comment on them. As an
11 editor, his job is to comment on them. To make changes in
12 them? If he had purchased the pages from Mr. Kirby, he
13 would make -- he could do whatever he wanted with them
14 once he bought them.

15 Q. Didn't he, from time to time, we'd agree, he
16 was being paid -- Kirby was being paid on a per page rate?

17 A. Yes.

18 Q. And did Mr. Lee from time to time ask Mr.
19 Kirby to make changes or suggest changes in material that
20 he submitted?

21 A. There were times when Stan would say, I need
22 something else here. I can't take this story as it is.
23 You've got to fix this before we can buy it. Yes.

24 Q. And Mr. Kirby would, in fact, make those
25 changes and resubmit; correct?

1 get a distributor to give you an advance, and you can keep
2 the costs of production of the item down, the risk in
3 publishing comic books at times can be very minor. There
4 is a risk certainly, but --

5 Q. So sometimes it's minor; sometimes it's major?

6 A. Yes. Yes.

7 Q. You stated in your report on page 5, I believe
8 it's page 5, in the middle of the paragraph that, "Writers
9 and artists were only paid if their work was accepted."

10 Do you see that?

11 A. Yes.

12 Q. What is the basis for that statement? Who
13 told you that?

14 A. Everybody. That was just the way people
15 understood it was done. That's the way when I got into
16 the business it was done. And when I asked about that,
17 they said that's how we do business.

18 Q. Would you dispute the testimony of Mr. Lee and
19 Mr. Romita and Mr. Thomas who all testified that in this
20 case that, in fact, writers and artists were paid for
21 whatever page they produced, whether or not it was
22 published?

23 MR. TOBEROFF: Objection. I'm not sure they
24 all said that.

25 A. Well, if the work was accepted and paid for,

1 it might not be published. So the publication -- rarely,
2 and I'm not saying this never happened, rarely did
3 publishers keyed payment to the publication. What they
4 keyed it to, what they based it on, was the acceptance of
5 the work.

6 So if Romita, and Stan Lee, and the other
7 gentleman Roy Thomas, said that artists -- that they
8 always got paid for their work even if it wasn't
9 published, well, they didn't always pay for the work.
10 They rejected scripts. They rejected artwork. They made
11 -- they told artists to redo things if they accepted it,
12 but the fact they did not publish it did not cause them to
13 ask the artist to give the money back.

14 Q. So when -- is it your view that if an artist
15 is asked to redo a page or a panel or make a change that
16 that's a rejection?

17 A. It's a rejection of the work as it stands
18 unrevised.

19 Q. Is it fair to say that --

20 A. If they -- excuse me. I'm sorry. Go ahead.

21 Q. Is it fair to say -- is it your view that if,
22 in fact, they redo the work and submit it, and they're
23 paid for it, then that work would not have been rejected?
24 I'm trying to understand what you mean by "rejected."

25 A. Well, I don't know if I introduced that word

1 into this discussion. But you submit work to -- let me
2 give you an example.

3 I submitted scripts to DC Comics in 1968. The
4 editors -- to Charlton. And the editors there said --
5 sometimes sent them back and said we don't want this. It
6 was rejected. I was not paid for it.

7 Once or twice the editor said: If you can
8 come up with a better ending for this, I might buy it. So
9 I did a -- rewrote the ending and submitted the work
10 again.

11 Now, the first version that I submitted was
12 rejected, rejected being the opposite of accepted here.
13 The fact that some of the work didn't change doesn't
14 change the fact that the first version in totality was
15 rejected.

16 Q. So that's your understanding of "they were
17 only paid if the work was accepted"?

18 A. Yes.

19 Q. But would you agree with me that the practice
20 was if the work was accepted, the artist or writer was
21 paid, whether or not it was published?

22 A. That I would agree with. Yes.

23 Q. Now, you mention that there were times that
24 you brought things to DC Comics, I believe you said, and
25 some of the work was not accepted. Was that work that

1 did as well, not just Marvel?

2 A. Yes.

3 Q. So they would be buying stories, artwork, et
4 cetera, to possibly use in the future, or not, based on
5 their own decision?

6 A. They would be buying material that they
7 expected to use, and it was -- I don't think they bought
8 anything without a very reasonable expectation that they
9 would print it soon. But what frequently happened was
10 that books would be canceled, and there would be stories
11 and work left over.

12 There were a number of instances in the case
13 of Marvel where a comic would be canceled, and there would
14 be two or three issues which had not been printed yet.
15 And Mr. Goodman would decide if they were not worth
16 publishing, then the stories would go on the shelf. And
17 then at some time later they might be taken off and
18 published. He found a place to use them.

19 Q. Are you aware as you sit here today of any
20 specific pages that Jack Kirby worked on back during this
21 '58 to '63 period that were not accepted?

22 A. The five pages or six he did of the first
23 Spider-Man story were not accepted.

24 Q. And was it your testimony that he was not paid
25 for that?

1 A. He told me he was not paid for it. He asked
2 repeatedly for the pages to be returned, and they never
3 were.

4 Q. Other than Mr. Kirby telling you that, do you
5 have any basis one way or the other as to whether or not
6 he was, in fact, paid for it, those pages?

7 A. I think Sol Brodsky told me Jack was not paid
8 for them.

9 Q. And if Stan Lee testified under oath that he
10 was paid for them, you would just choose to believe Kirby?

11 A. Well, I would tend to believe that Stan didn't
12 know what frequently people were being paid for.

13 Q. And what's the basis of that?

14 A. Stan.

15 Q. -- statement?

16 A. Stan inoculated himself frequently from that
17 end of the business.

18 Q. How do you know?

19 A. Sol Brodsky was the guy who usually would take
20 care of making out the checks, or making out the check
21 request forms, and such. But you're dealing here with
22 something quite some time ago that people at the time
23 didn't pay much attention to.

24 Q. When you say "quite some time ago people
25 didn't pay much attention to," what do you mean? What did

1 they not pay much attention to?

2 A. Stan would not have paid much attention to
3 whether or not Jack was paid for the story at the time.

4 Q. And is that statement by you or that's an
5 opinion? What is that based on?

6 A. My understanding of how Marvel was set up is
7 that Stan would try to distance himself from the actual
8 page rates and the checks. One of the things Sol Brodsky
9 complained to me about good naturedly and jokingly how
10 often he got stuck with being the bad guy for Stan and
11 telling people they weren't going to get paid for things,
12 or their rate was being cut, or their check was going to
13 be late. But he handled that type of thing.

14 And Stan was -- Stan was not in the office
15 very often, was not in the office every day. Other people
16 would handle the bookkeeping. He was not -- Stan was not
17 a bookkeeper. He was not a guy who spent a lot of time
18 filling out the forms.

19 And frequently, when I asked Stan questions
20 about the financial end of Marvel, he would just shrug and
21 say, "That's not my job. I didn't do that."

22 Q. He was in the creative end?

23 A. He was in the editorial end, creative end,
24 yeah. He was in charge of the stories and artworks areas,
25 not in charge of the bookkeeping department.

1 Q. You state in the paragraph that starts
2 "Goodman meanwhile" about a few lines down. "But until
3 the debut of Fantastic Four in 1961, few comics seemed to
4 be permanent fixtures."

5 What's the basis for that statement?

6 A. Looking at the history of publishing at
7 Marvel, they tended to cancel books very fast. The ones
8 that -- the ones that kept going for quite some time were
9 flukes.

10 And, you know, I have talked to an awful lot
11 of people about Martin Goodman, and there is a unanimity
12 of opinion about him from people who worked in that time
13 period. And Stan Lee has said this on many occasions, and
14 Sol Brodsky said it, and Jack said it. It's a consistent
15 portrait of a man who was always trigger happy, ready to
16 cancel a comic when he got one bad sales report. Sales
17 were down, he would cancel a book.

18 Sol Brodsky told me that frequently, very
19 often, in fact, what would happen would be that they would
20 get the sales figures in on, let's say, you know, Issue 22
21 of a comic. And Martin would go, oh-oh, it's down. Let's
22 cancel it. Then someone would tell him, well, we've got
23 Issues 22, 23. We've got the next three issues sitting on
24 the shelf. And he would decide, well, it would be cheaper
25 to publish them than to write that material off. So

1 they'd publish those issues. And by the time they could
2 cancel the book and not have inventory left over, they
3 would get some encouraging sales figures, so he would
4 uncanceled the book.

5 And so very few comics at Marvel were ever
6 done with the expectation, well, this comic will be done a
7 year from now or two years from now, which was different
8 from quite a few of the other publishers. Most of the
9 major publishers had a few titles that were solidly
10 ensconced. And DC Comics was never worried they would
11 have to cancel Superman soon. Dell Comics was never
12 worried they would have to cancel Donald Duck soon.

13 But Martin ran his company with the idea that,
14 well, we may have to cancel all war comics and replace
15 them with Westerns, or replace all our love comics and
16 replace them with comic books about funny rabbits or
17 something.

18 Q. You're familiar with Marvel's horror titles?

19 A. The ones in the 50s?

20 Q. Yes.

21 A. Yes, I am.

22 Q. Amazing Fantasy and Journey into Mystery?

23 A. Amazing Fantasy was in the late 50s, early
24 60s. Yes.

25 Q. Those, that group of titles, in fact, did last

1 for a long period of time, didn't they?

2 A. Amazing Fantasy was canceled after No. 15.

3 Q. Journey into Mystery?

4 A. Journey into Mystery changed into Thor. The
5 comic -- that comic did last for a long time. That was a
6 book that -- let me speak to a larger issue here.

7 During the 50s, they published dozens and
8 dozens of what they called Weird Comics. They were ghost
9 stories, horror stories.

10 Q. Right.

11 A. And they had a huge inventory of them. And
12 they would change titles and cancel them. In those
13 particular books, they could cancel one title and stick
14 the material in another comic because there were no
15 continuing characters. So the material done for Marvel
16 Tales could be used in Uncanny Tales or could be used in
17 Adventures of the Weird World or whatever.

18 Those comics as a bulk went on for a long
19 time. Then they all got canceled because of the
20 negativism in the country about horror comics. And they
21 brought some of them back in a different format. They
22 used the same name during the -- the content of Journey
23 into Mystery changed. They just used that as a blanket
24 title. Originally it was a horror comic. Later it was a
25 science fiction comic. Later it was the comic starring

1 Thor.

2 Then they turned the title Journey into
3 Mystery into the comic called Thor. The numbering of
4 Journey into Mystery blend into the numbering of Thor.
5 And then later still, they brought back another comic
6 called Journey into Mystery, which reprinted old stories
7 from before Thor was in the comics. So it was not a
8 consistent ongoing title.

9 But they did have books that lasted awhile.
10 They just did not have comics that ever looked like they
11 would last for a while.

12 Q. You also say in your report that one of the
13 many casualties, referring to one of the publishing
14 companies that didn't make it in the 50s, was Mainline
15 Publications, which was a relatively new company, I guess,
16 that Simon and Kirby had put together in the mid 50s?

17 A. Yes.

18 Q. What did Mainline Publications actually
19 publish?

20 A. They published four titles. And I will tell
21 you the titles in a minute here. Police Trap, In Love,
22 Fox Hole. And there was a war comic called Fox Hole,
23 Police Trap, Bullseye, and In Love were the four titles.
24 And they were about to launch two new ones at the time
25 that --

1 when it's placed, so we have to keep that area clean.

2 So --

3 Q. Oh, that's the top one. I see.

4 A. -- let's put Oden in the bottom.

5 Q. So he's essentially telling him to move some
6 of the stuff on the drawing?

7 A. Yes.

8 Q. Is that something that he typically did after
9 seeing some of the drawings?

10 A. This is very rare. I think I say on the next
11 page that they almost never even worked this way. This is
12 a very rare artifact. It's one of the few times Jack ever
13 did a cover sketch like this.

14 Q. But this is an example of Jack actually giving
15 some pretty specific directions -- of Stan giving Jack
16 some pretty specific directions with regard to at least
17 this particular drawing; right?

18 A. I don't know they're that specific. "Can this
19 be the Rainbow Bridge?" Leaving it up to Jack to decide.

20 "Put Oden here somehow if you can." That's
21 leaving it up to Jack to decide.

22 Usually a cover usually when an editor goes
23 over a cover sketch -- and Jack didn't do very many cover
24 sketches in his career -- usually the editor does a much
25 more detailed composition. They would have something done

1 in the office. They do an overlay and have another artist
2 maybe move things around and show where to put them.

3 This is very undetailed, a very undetailed set
4 of suggestions.

5 Q. It's fair to say that it's an example, at
6 least, of Mr. Lee giving at least some direction to Mr.
7 Kirby about how he should do this drawing. Isn't that
8 fair?

9 A. Very little direction. I'm not sure what
10 you're trying to get me to say here.

11 Q. I'm not trying to get you to say anything.
12 I'm trying to get some testimony here. That's all. Say
13 whatever you want.

14 A. As we've established before, there were times
15 when Stan sent things back to Jack and said, This has to
16 be -- you know, I can't use this in the form it's in.
17 Let's do something different. This is an example of that,
18 I would suppose.

19 Are we done with this book?

20 Q. Yeah. Don't let it go too far away. But
21 yeah.

22 A. All right. Okay. Can I get a glass of water
23 at some point here?

24 MR. QUINN: Why don't you get it now.

25 MR. TOBEROFF: I will get it.

1 A. Yes.

2 Q. And you are aware that Mr. Kirby, in signing
3 that, received monies as part of that deal; correct?

4 A. I'm aware that he received part of the money
5 he was promised.

6 Q. He received monies as a result of that?

7 A. I answered your question.

8 Q. Well, I'm going to say it really simply, Mr.
9 Evanier.

10 A. All right.

11 Q. He received money in connection with the
12 Captain America settlement, didn't he?

13 A. He received some money.

14 Q. Right. And you say on page 14 at the top of
15 the page you conclude that.

16 (Reading:) It is extremely doubtful that
17 either Marvel or freelance artists such as Jack
18 Kirby, particularly between 1958 and 1963, had
19 any understanding or intent that their freelance
20 material created at home on their own steam, on
21 their own dime, and later purchased on a per page
22 basis after it was completed and approved for
23 publication, was somehow work made for hire.

24 What is the basis of that statement as to what is
25 Kirby's or other freelance artists' understanding or

1 intent was back in 1958 to 1963?

2 A. Well, in 1978, around 1978, when both DC and
3 Marvel began to put the words "work for hire" into their
4 contracts and releases and paperwork, there was an outcry
5 in the comic book business about it because no one really
6 knew -- had seen that term before.

7 I was on a panel at a convention called "What
8 the Hell is Work for Hire?" Artists and writers did not
9 -- had not been confronted with that language before, did
10 not know what it meant. There was a lot of protest.
11 There were people circulating petitions refusing to sign
12 those documents.

13 DC Comics, at least, and maybe Marvel,
14 modified their original agreements because there was so
15 much protest from freelancers that they would not sign the
16 contracts as they were initially worded.

17 So the words "work for hire" suddenly came
18 into the comic book community, and people just were
19 baffled by them. They didn't know what it meant.

20 And so I am concluding that when the work was
21 done in '58 and '63, nobody thought the words "work for
22 hire" would ever apply to their work because they didn't
23 know those words.

24 Q. You do understand that the work for hire
25 concept was in the 1909 Copyright Act? Been around

1 old picture of me.

2 MR. TOBEROFF: Very cherubic.

3 What number are we up to?

4 Q. 14. Can you just identify this document for
5 us, please.

6 A. This is a scan or xerox of my column that
7 appeared in Jack Kirby Collector No. Thirty-Eight

8 Q. And just a couple of questions on this. You
9 were being asked, I guess, a series of This is Jack FAQs.

10 A. Yes.

11 Q. Frequently Asked Questions. And one of them
12 is: Jack Kirby designed Spider-Man's custom.

13 And you answer: False. Steve Ditko designed
14 the distinctive costume we all know and love. Jack did
15 claim to have presented the idea to Stan of doing a hero
16 named Spiderman, no hyphen, who walked on walls and other
17 Spiderman themed powers, a claim which Stan formally
18 denies.

19 A. I think I said vociferously denies.

20 Q. Oh, I'm sorry. You're right. Vociferously
21 denies.

22 Tell me which version do you believe with
23 regard to Jack's supposedly bringing the idea of Superman
24 -- Spider-Man to Stan Lee? Do you believe Jack's version
25 or Stan's vociferous denial?

1 A. As I stated earlier, I believe -- well, I
2 believe that Jack did bring in the idea of doing Spiderman
3 to Marvel.

4 Q. So you believe Jack's version?

5 A. I believe that part of Jack's version.

6 Q. That's the part I'm asking you about.

7 A. Okay. I believe that Jack did come in and
8 present that to Marvel.

9 Q. Okay. And that's based on your discussions
10 with Jack?

11 A. Based on my discussions with Jack, based on
12 the fact that he had this piece of artwork that said
13 Spiderman done by Joe Simon earlier.

14 Q. That's the one that you don't have any idea
15 where it is today; right?

16 A. I don't know where it is today, no, but
17 it's --

18 Q. Did you ever see the piece of work?

19 A. I held it in my hands.

20 Q. You did. And what happened to it? Do you
21 have any idea?

22 A. Jack kept it for many years, and at one point
23 when he was talking to Joe Simon, Joe said, "Hey, I'd like
24 that back." And he sent it back to Joe Simon. I think I
25 answered this question earlier. And the last I saw of it

1 Silver Spider pages or printed the title logo.

2 Q. The title logo you're referring to?

3 A. The title logo that's the Spiderman that has
4 been printed a couple of times in different magazines.

5 Q. Do you have any idea which magazines when?

6 A. There was a magazine called Pure Imagination
7 that I know printed it. I'm not sure which issue. I
8 think it's probably been in some issue of the Jack Kirby
9 Collector, but I don't know specifically.

10 Q. You're familiar with the Iron Man; right?

11 A. Yes.

12 Q. And who is the artist on the first issue of
13 Iron Man?

14 A. Jack drew the cover, and Don Heck drew the
15 insides.

16 Q. And am I right that Lee was the one who came
17 up -- Stan Lee came up with the plot outline for the Iron
18 Man?

19 A. Stan says he did. Jack says he did.

20 Q. And you are at least aware -- by the way, who
21 did you decide to believe there, Stan or Jack?

22 A. Neither. I choose -- this is one of those
23 cases --

24 THE REPORTER: I'm sorry, I didn't hear what
25 you said, Mr. Quinn.

1 Q. They're both lying, with a question mark.

2 A. I would not use the term "lying." I think they
3 both have their versions. And when I report the history,
4 I will report both of them and let the reader decide.

5 Q. You are aware that Larry Lieber was -- did --
6 was assigned to write the full script; correct?

7 A. Larry Lieber wrote a script. Yes.

8 Q. And he wrote the script before Heck drew the
9 -- before he drew the comic?

10 A. Yes.

11 Q. And what role does Kirby say he played in the
12 first issue of Iron Man?

13 A. Jack says he came up with the concept,
14 presented it to Stan as an idea that they would do
15 together. They talked it out. The idea was put on hold
16 because there was no place to do it at that moment. And
17 then subsequently Stan did it with Don Heck or put it into
18 Tales of Suspense and had Don Heck draw the first one. He
19 wasn't happy with what Heck did, so Jack came in and
20 started drawing it after that.

21 Let me finish. Jack also --

22 Q. Please. By all means finish.

23 A. And Jack also drew the cover of the first
24 issue, and on that cover he designed the look of Iron Man
25 and the idea of the character putting on this iron which

1 is depicted in three small panels that appear on that
2 cover.

3 Q. This is what Kirby told you?

4 A. This is what Kirby told me and what Heck told
5 me.

6 Q. And it's your understanding that Kirby did the
7 cover before Heck drew the panels?

8 A. That's what Kirby told me, and that's what
9 Heck told me.

10 Q. And is it also your understanding with regard
11 to the script that Lieber Larry was working from a plot
12 that Stan had given him?

13 A. Larry says he got the plot from Stan.

14 Q. Do you have any reason to disbelieve Larry
15 about that?

16 A. No. I just don't know how much of the plot
17 that Stan gave him came from Jack.

18 Q. You don't know one way or the other; right?

19 A. I don't know. I assume that some of it came
20 from Jack because Jack had already drawn the cover by that
21 point.

22 Q. You assume that because he drew the cover.
23 But other than, because he drew the cover, do you have any
24 other basis to believe that he contributed to the plot?

25 MR. TOBEROFF: Asked and answered.

1 A. Don Heck believed Jack had contributed to the
2 plot.

3 Q. And that was based on discussions you had with
4 Don Heck?

5 A. Yes.

6 Q. Is Don Heck alive?

7 A. No, he's not.

8 Q. You did write in the King of Comics, page 273,
9 Iron Man written at first by Larry Lieber and drawn
10 initially by Don Heck. However, Lieber was working from a
11 plot Stan had given him, and Heck was drawing from a cover
12 and some concept sketches by Kirby.

13 When you wrote that Lieber was working from a
14 plot Stan had given him, you didn't mention that Kirby had
15 anything to do with the plot there when you wrote it, did
16 you?

17 A. No, not in the way I phrased it there.

18 Q. And then it goes on to say, "Stan wasn't happy
19 with the first story, so he immediately turned the art
20 chores over to Kirby, and Jack was the answer to all
21 problems."

22 A. Yes.

23 Q. Right. So that was another instance where
24 Stan decided to reassign work because he was unhappy?

25 A. Yeah.